

REMARKS

This Reply with Amendment is filed by Applicant in response to the Office Action dated October 4, 2007 in which the Examiner has objected to claim 1 on grounds of informality in the recited text as well rejecting of all of the application's currently pending claims 1-7 on grounds of cited prior art. The Applicant has in this Reply obviated the Examiner's objection by amendment of claim 1, and has traversed the Examiner's grounds for rejection of claims 1-7. The Applicant's argument is presented in the following paragraphs which are numbered in association to the Examiner's numbered paragraphs of the Office Action.

Claim Objections

2. The Examiner has objected to the phrase "***can determine whether a particular data application on the mobile phone can currently be executed***" in the claim 1 preamble as not being a "positive recited claimed limitation". As shown on page 2 of this reply, claim 1 has been amended to provide positive recital of the subject feature. Therefore, withdrawal of the Examiner's objection and reconsideration and allowance of amended claim 1 is respectfully requested.

35 USC § 102 Rejections

3., 4. "Claims 1-3 are rejected under 35 U.S.C. 102(a) as being anticipated by Olofsson et al. (U.S.6,668,159; hereinafter refer[ed to] as "**Olofsson**")".

Olofsson discloses and claims a method (claims 1-4) and apparatus (claims 5-9) for indicating on a mobile station display the "maximal transmission quality" that is currently available between the mobile station and the base station. The mobile station determines the maximal transmission quality based on its designed transmission capabilities (i.e. its memory stored performance specifications) and the current transmission capabilities of the base station as broadcast to the network on the base station broadcast control channel, or "BCCH. This includes the network's current traffic load and whether the base station supports multi-slot (or multi-code) operations and different coding/modulation schemes. Once determined the maximal transmission

quality is presented to the mobile station display as performance information to be read by the mobile station user.

The maximal transmission quality is displayed as a bit rate, which in the embodiment disclosed by Olofsson is a bar graph format, as a relative display of current maximal transmission quality on a maximum transmission quality scale. In an alternative embodiment, a predicted maximal transmission quality indication is also calculated and displayed with the current maximal transmission quality. The predicted transmission quality represent the maximal transmission quality that is achievable within the current cell and by comparison to the current maximal transmission quality informs the user whether relocating within the cell will improve the quality of transmission.

The current and predicted maximal transmission quality indications provided by Olofsson provide the user with better information on current data transmission capabilities than the prior art displayed RSSI (received signal strength indicator) which relates to voice transmission. However, the user must read or interpret the displayed maximal transmission quality indication and then judge whether it satisfies the minimum bit rate requirements for the data transmission they wish to make. Considering the diversity of software applications that may be present on the mobile station, including email, SMS, MMS and gaming, this is an impractical, if not impossible imposition on the user.

The method of the current invention, as recited in Claim 1 (Currently Amended) is to **"A method of providing a data capability indication on a mobile phone that notifies a user on whether or not a particular data application on the mobile phone can currently be executed on the mobile phone network"** (lines 1,2, emphasis added). The distinction over Olofsson is that the present method itself makes the decision on whether or not a particular data application can be executed in view of current transmission quality. It does this by "obtaining" the **"minimum data throughput requirement for the application"** (Claim 1, lines 5, 6) and then "calculating" **"a current maximum data throughput rate between the mobile phone and the mobile phone network"** (claim 1, lines 7, 8). The two quantities are compared for the purpose of "determining" **"whether the current data throughput rate is greater than the minimum data throughput requirement of the application"** (claim 1, lines 9, 10).

Depending on the result of this determination, there is either **“displaying a positive indicator on the mobile phone that the application can currently be run”** (claim 1, lines 11,12) or **“displaying a negative indicator on the mobile phone that the application cannot currently be run”** (claim 1, lines 15, 16).

The displaying of the positive indicator and of a negative indicator provides an overt and an immediate indication to the user that the particular application will perform under the current data throughput rate between the mobile and the base station. It is a complete quantification to the user of the current data throughput rate between the mobile and the base station in respect of the particular data application. This gives the user immediate information on the status of the network's throughput as it relates to the user's ability to transmit data to the network, and it does this without a need for understanding or judgment by the user.

Olofsson neither shows nor suggests the method steps recited in claim 1 of obtaining the minimum data requirements of the application, nor the steps of determining or displaying. The Examiner incorrectly cites Olofsson column 7, lines 1-6 and Figure 5 B as determining the minimum data rate of the application when this citation relates solely to the calculation and display by Olofsson of the “predicted maximal transmission quality”, which is not a part of the present invention. Therefore, reconsideration and allowance of claim 1 under 35 U.S.C. 102(a), over Olofsson, is hereby respectfully requested.

Claims 2 and 3 depend from claim 1 and are patentable over Olofsson for all of the reasons described hereinabove with respect to claim 1. Therefore reconsideration and allowance of claims 2 and 3 over Olofsson is hereby respectfully requested.

35 USC § 103 Rejections

5., 6. “Claims 4-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Olofsson et al. (U.S. 6,668,159).”

Claim 4 (**Original**), shown hereinabove on page 3, recites the negative indicator provided in the Claim 1 second step of “displaying”, as appearing **“as the application**

shaded out on the display of the mobile phone" (claim 4, lines 1,2). The Examiner has rejected Claim 4 as being obvious over the disclosure by Olofsson of the side by side bar graph display of the maximal and predicted transmission quality. As understood, the Olofsson displayed maximal and predicted transmission quality bit rates report the available bandwidth between the mobile station and the base station. As such, neither displayed quantity, alone or in combination, relate to, nor may they be correlated with, any particular application present on the mobile station.

The maximal transmission quality value, however, is necessary to the step of **"determining whether the current data throughput rate is greater than the minimum data throughput of the application"** (Claim 1, lines 5, 6), which follows the step of **"obtaining a minimum data throughput requirement for the application;"** (Claim 1, lines 5, 6), both of which are necessary antecedent steps to that of **"displaying a negative indicator on the mobile phone that the application cannot currently be run..."** (Claim 1, lines 15, 16). These steps are neither shown nor suggested by Olofsson, which itself provides no teaching or suggestion to providing a negative indicator display to the user. Therefore, reconsideration and allowance of Claim 4 under 35 U.S.C. 103(a), over Olofsson, is hereby respectfully requested.

Similarly, Claim 5 (**Original**), page 3 hereinabove, recites the positive indicator provided in the Claim 1 first step of **"displaying a positive indicator on the mobile phone that the application can currently be run..."** (Claim 1, lines 11, 12). Olofsson provides no teaching or suggestion to displaying an indicator on whether a particular application can or cannot be run. Therefore, for all of the reasons given hereinabove with respect to Claim 4, reconsideration and allowance of claim 4 under 35 U.S.C. 103(a), over Olofsson, is hereby respectfully requested.

Claims 6 and 7 each recite displaying a current rate icon, either in a current dBm level format (Claim 6) or in a bits per second format (Claim 7). Claims 6 and 7 indirectly depend from Claim 1 and are patentable over Olofsson for all of the reasons given hereinabove with respect to Claim 1. Therefore, reconsideration and allowance of

Claims 6 and 7 under 35 U.S.C. 103(a), over Olofsson, is hereby respectfully requested.

The references to **Udicha et al.** (U.S. 2005/0113028), **Moon, Sung-Jun** (U.S. 2004/0166811) and **Sano, Eiichi** (U.S. 7,167,697) have been reviewed and it is agreed that each are less relevant to the present invention than is the reference to **Olofsson**.

Inasmuch as the objection and rejections entered by the Examiner in the Office Action of October 4, 2007 have been obviated by amendment, or have been shown to be inapplicable, reconsideration and allowance of claims 1 through 7, and passage of these claims to issue, is hereby respectfully requested.

If the Examiner has any questions about the present amendment or anticipates finally rejecting any claim of the present application, a telephone interview is requested.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 13-4365.

Respectfully submitted,

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